

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 675 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MANOJ ISHWARBHAI MARWADI

Versus

STATE OF GUJARAT

Appearance:

Mr. RAKESH SHARMA for MR.HL PATEL ADVOCATES for Petitioner
MR. K.G.SHETH, Learned APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/09/2000

C.A.V. JUDGEMENT

1. The present petition has been filed by the petitioner abovenamed under Articles 21 and 227 of the Constitution of India challenging the order of his

externment dated 22.6.1999 passed by the Deputy Commissioner of the Police, Zone 2, Ahmedabad City in Externment Case No. 87 of 1999 and confirmed in Appeal by Deputy Secretary, Home Department, Gandhinagar on 4.9.1999 dismissing the said appeal of the petitioner.

2. The petitioner states that he was served with the notice of externment and after he received the same, he had replied it in writing. Thereafter, he was heard and Deputy Commissioner of Police had passed order at Annexure-D at page -15 dated 22.6.1999 directing his externment under Section 56 B of the Bombay Police Act, 1951 (for short "the said Act") for a period of 2 years from the area indicated in the said order. That the petitioner had carried the matter in appeal. There also he failed and the orders have been passed in Appeal on 4.9.1999. The petitioner has challenged these two orders in this petition.

3. On receipt of the petition, rule was issued and Mr. K.G.Sheth appeared for State. I have heard learned advocates for the parties and have perused the papers.

4. Now, it is very clear that so far the orders are concerned, they are stated to have been passed under Section 56 B of the said Act. Now, if we refer to the notice, it is found that the notice has been issued to the petitioner considering the provisions contained under Section 56 B of the said Act and if we look at the order Annexure-B, it is clear that the order covers the grounds mentioned under Section 56 B of the said Act as well as the grounds mentioned under Section 56 A of the said Act. This shows that though the notice related to the grounds mentioned in Section 56 B of the said Act only, the order is not restricted to that ground but it travels to the ground envisaged under Section 56 A of the said Act also, this would clearly suggest that while passing the impugned order, grounds not mentioned in the notice have also been taken into consideration and the order of externment of the petitioner has been based on the extraneous matters which did not find place in the notice. The authority has to consider the grounds mentioned in the notice and not the grounds which are not covered by the notice. If the said authority proceeds to consider the grounds not mentioned in the notice then the said order cannot be said to be legal or valid since the petitioner was called upon to meet with only those grounds mentioned in the notice. In that view of the matter, there is a clear case of violation of principle of natural justice and consequently, the order of externment cannot be sustained on that consideration.

5. It should be seen here that even the appellate authority has not considered the said aspects while passing the order on 4.9.1999 at page-24. Another aspect of the case is that the petitioner had examined certain witnesses and their evidence has not been considered by the Deputy Commissioner of Police while passing the order on 22.6.1999. This shows that there is non-application of mind to the material placed before the authority by the petitioner.

6. It is true that while passing the order in appeal, the appellate authority has observed that eight witnesses have been examined by the petitioner, but they have come to give evidence at the instance of the petitioner. Now, the witnesses would be called by the petitioner and hence, they would naturally go to the authority for tendering the evidence at the instance of the petitioner. This would not be a ground for rejecting the evidence. It is further stated in the said order that those witnesses are staying nearly the residence of the petitioner or carrying on the business and they appear to have some relations with the petitioners. The petitioner may bring witnesses who may be known to him. No unknown witnesses can be produced by him for tendering any useful material to the concerned authority. It is not shown in the order that the witnesses are interested in the petitioner. The evidence of the witnesses does not appear to have been challenged and, therefore, unchallenged evidence of those witnesses cannot be ignored in the aforesaid manner. This also shows that the evidence of those witnesses has not been properly appreciated even by the appellate authority. That would again indicate non application of mind on account of which the orders in question cannot be sustained.

7. In the aforesaid view of the matter, the order of externment of the petitioner is unsustainable at least on the aforesaid ground, so it is not necessary to go into other grounds agitated by the petitioner.

8. The result is that it is clear non application of mind to the material placed on record and there is further substance in the arguments that though the notice was issued and though the order of externment refers to Section 56 B of the said Act, the grounds considered cover the grounds under Section 56A of the said Act which on one hand deprives the petitioner from meeting with the said case of the externing authority and on the other hand it demonstrates non application of mind to the allegations made in the notice and allegations considered

while passing the order. That shows that the orders of the Deputy Commissioner of Police and appellate authority suffer from the aforesaid infirmity.

9. In the aforesaid view of the matter, the petition is required to be allowed and the orders are required to be quashed and set aside.

10. In the facts and circumstances of the case, this petition is allowed and order passed by the Deputy Commissioner of Police , Zone 2, Ahmedabad City on 22.6.1999 in Externment Case No. 87 of 1999 and confirmed in Appeal by Deputy Secretary of Government of Gujarat, Home Department on 4.9.1999 are quashed and set aside. Rule made absolute. Direct service is permitted for respondent no.2.

(D.P.Buch, J)
(vipul)